IN THE

Supreme Court of the United States

..... Term, 1978

No. 78-569

UNITED STATES OF AMERICA,

v.

JOHN PATTON, a/k/a BUNCIE,

Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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The Petitioner, John Patton, respectfully prays that a Writ of Certiorari issue to review the judgment and judgment order of the United States Court of Appeals for the Third Circuit entered in this proceeding on August 8, 1978.

Opinion Below

The Opinion of the Court of Appeals, holding that a Court may disregard the mandate of 18 U.S.C. 3500 is unreported and is attached hereto as Appendix "A".

Jurisdiction

The Court of Appeals order denying the Petition for Rehearing is attached hereto as Appendix "B", and was filed on September 5, 1978. This Petition is filed within thirty (30) days of that date pursuant to Rule 22(2) of the United States Supreme Court.

The Court's jurisdiction is invoked under Title 28, United States Code Section 1254(1).

The District Court's jurisdiction was invoked by the Government under Title 21, United States Code § 846, § 841(a)(1), § 843(b).

Questions Presented

1. Was it error for the Court to refuse to grant a mistrial, or, in the alternative, to strike the testimony of two (2) Government Agents where the prosecution failed to supply defense counsel with the Grand Jury testimony of each of the Agents pursuant to the "Jencks Act" (18 U.S.C.A. 3500, attached hereto as Appendix "C"), which denied the Defendant the ability to effectively cross-examine the Government Agents?

2. Was it error for the Court to refuse Defense Motion to Strike the Testimony of Government Witness, Archie Patrick, where multiple "debriefings" of Mr. Patrick were tape-recorded and the tape recordings subsequently destroyed by the Government in violation of the "Jencks Act"?

3. Was the Appellant, Frank Dattalo, prejudiced by the closing remarks of the prosecutor, Mr. Charles Caruso?

Statement of Case

Following an investigation, the Drug Enforcement Administration of the United States sought an indictment against the Petitioner-Appellant, Frank Dattalo, and others, including one (1) Martel Inmon. On July 14, 1976, Agent Richard Weatherbee of the Drug Enforcement Administration appeared before a Federal Grand Jury seeking an indictment. He testified to facts and opinions concerning the subject matter of the investigation and summarized testimony of various Government witnesses for consideration by the Grand Jury.

The Grand Jury returned a true bill on July 14, 1976, in precisely the same form as presented to the Grand Jury by Agent Weatherbee.

The superseding indictment was secured on September 24, 1976, which changed certain dates and individuals in various counts of the original indictment. The original indictment was subsequently dismissed.

Also, on July 14, 1976, the date of the original indictment, Drug Enforcement Administration Agent Roy Upton appeared before the same Federal Grand Jury and in the same manner as Agent Weatherbee, secured an indictment against a number of individuals, one (1) of whom was the same Martel Inmon named in the indictment with the Petitioner-Appellant, John Patton.

Prior to the commencement of the trial, the attorneys for the Government and for the defense agreed to a "*de facto* Jencks procedure", to-wit, that all Jencks material would be delivered to defense counsel twenty-four (24) hours prior to each of the Government's witnesses being called to testify. This procedure was agreed to in an effort to expedite the trial and minimize the delays usually encountered while defense counsel review Jencks material.

At all times throughout the presentation of the Government's case, the defense believed that it had all the material that fell within the confines of the Jencks Act, as to each witness called to testify by the Government. The defense was assured of this by the Government's attorneys and by the Court's action in directly ordering the Government to comply with the Jencks Act. The Government did not provide defense counsel with the Grand Jury testimony of Agents Upton or Weatherbee, nor did the Government submit the Grand Jury testimony to the Court for review to determine whether or not the Grand Jury testimony was properly producible under the Jencks Act.

During the testimony of one (1) of the Government informants, it became apparent that the superseding indicting Grand Jury may not have been properly informed of the conflicting statements given by the informant. The defense raised the issue of prosecutorial misconduct in the securing of the indictment based upon testimony elicited from the informant. The defense requested an immediate evidentiary hearing on the issue, but the Government opposed the hearing at that stage in the trial, arguing that it was unwarranted discovery. The Court ordered that issue to be preserved until the close of the Government's case, at which time, a hearing would be held on the Motion.

The trial continued with the Agents' Grand Jury testimony locked in the Government's file until the close of the Government's case. After resting, the Government delivered to defense counsel copies of the July 14, 1976 Grand Jury testimony of Agents Upton and Weatherbee.

During the course of the trial, both Agents Weatherbee and Upton testified on numerous occasions to each phase of the investigation just as both had done before the Grand Jury. Agent Weatherbee was called to the stand approximately twenty-nine (29) separate times, and Agent Upton was called approximately thirteen (13) separate times.

Upon discovering who the witnesses were before the Grand Jury and reading the content of their Grand Jury testimony, the defense raised a violation of the Jencks Act and moved for a mistrial, or in the alternative, that the testimony of now-disclosed witnesses before the Grand Jury, Agents Upton and Weatherbee, be stricken and the case continued. The Court refused the Motion. However, the Court did recognize the transgression of the Jencks Act, and suggested to the Government it move to open its case and tender the two (2) witnesses, Upton and Weatherbee, for further cross-examination by the defense. The split cross-examination was not agreed to by the defense on the grounds that the Jencks Act made no provision for such a procedure. The Court refused to grant a mistrial and ordered the trial to continue without striking the Agents' testimony.

The second issue presented arises out of the testimony of another Government witness, one (1) Archie Patrick, an informant who was used by the Government to purchase heroin from Martel Inmon. During the course of the investigation, Mr. Patrick was "debriefed" by Agents on numerous occasions, during which "debriefings" a tape recorder was used to record Mr. Patrick's statement. The Government Agents did not have the verbatim tape-recorded "debriefing" sessions transcribed. Rather, they made their own notes of the information given to them by Mr. Patrick in each of the "debriefing" sessions and then destroyed the tape recordings. During the course of cross-examination of Agent Upton, it was learned that the Government Agents became aware that Mr. Patrick was not only purchasing heroin and delivering it to the Government, but that he was also purchasing heroin from Mr. Inmon and selling it for personal profit. These purchases and sales for a profit occurred while Mr. Patrick was being paid a monthly stipend of $700 by the Government for his co-operation.

Under cross-examination, Agent Upton admitted that although they learned of Mr. Patrick's illegal conduct while working as a Government operative, and discussed it in the "debriefing" sessions, they elected not to include that information in any of their notes of the "debriefing" sessions. The defense moved to strike Mr. Patrick's testimony based upon the destruction of the verbatim tape-recorded statements of Mr. Patrick. The Motion was denied by the Court.

The final issue arises out of the following statement made to the jury by Government Attorney Charles Caruso in his rebuttal remarks following the closing remarks of the defense:

> Mr. Caruso: Ladies and gentlemen, let me suggest, that if justice isn't done in this case, if these people walk out without paying their due, there has been a swindle on this jury and on this system we all believe in.

Notice of Appeal was filed on February 24, 1978.

The Court of Appeals filed their Judgment Order on August 7, 1978, affirming the judgment of the Court below.

On August 16, 1978, Petitioner filed a Petition for Rehearing.

On September 5, 1978, the Court of Appeals for the Third Circuit filed its Order denying the Petition for Rehearing.

The Mandate of the Court of Appeals has been denied by Order of September 29, 1978.

Reasons for Granting Writ

1. The Opinion of the United States Court of Appeals for the Third Circuit was filed on August 7, 1978, affirming the judgment of the District Court.

2. The Appellant believes that the Court erred in not addressing itself to the questions as follows:

A. (1) The refusal of the Government to submit, for purposes of cross-examination, the Jencks material (the Grand Jury testimony) was such that the Defendant-Appellant was unable to effectively cross-examine the Government Agents in order to exonerate himself.

(2) By refusing to consider this question and affirming the District Court, the Third Circuit Court is now in conflict with two (2) of its prior decisions, both of which are in conflict with the instant case, to-wit, *United States v. Clark*, 346 F.Supp. 428 (E.D. Pa. 1972); affirmed, 475 F.2d 1396 (3rd Cir. 1973); and *United States v. Prince*, 264 F.2d 850 (3rd Cir. 1959).

(3) The Circuits are divided as to this issue and clarification is needed.

Conclusion

For the foregoing reasons, it is respectfully requested that this Court grant a Writ of Certiorari and reverse the decision of the Court of Appeals.

Dated: . . . . . .

JOHN L. DOHERTY, ESQUIRE,
Attorney for Petitioner.

APPENDIX "A"

Judgment Order

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 78-1289

UNITED STATES OF AMERICA,

vs.

PATTON, JOHN a/k/a Buncie
John Patton,

Appellant.

Appeal from the United States District Court
for the Western District of Pennsylvania
(D. C. Crim. No. 76-141-1)

Submitted Under Third Circuit Rule 12(6), August 7, 1978
Before: ALDISERT, VAN DUSEN and HUNTER,
Circuit Judges.

After considering the contentions raised by appellant, to-wit, that (1) appellant suffered prejudice because of his joinder for trial with his co-defendants; (2) appellant was prejudiced by the closing opinion of the prosecuting attorney; (3) appellant was not properly identified by the prosecution; (4) the district court erred in refusing to grant a mistrial, or, in the alternative, to strike the testimony of two government agents where the prosecution failed to supply defense counsel with the grand jury testimony of each of the agents pursuant

to the Jencks Act; and (5) the district court erred in denying the defense motion to strike the testimony of a government witness, where multiple "debriefings" of the witness were tape-recorded and the recordings destroyed by the government in violation of the Jencks Act; it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

BY THE COURT,

ALDISERT,
Circuit Judge.

Attest:

M. Elizabeth Fergusen
Acting Clerk

DATED: August 7, 1978

Certified as a true copy and issued in lieu of a formal mandate on September 13, 1978.

Test: THOMAS F. QUINN

Clerk, United States Court of Appeals for the Third Circuit

APPENDIX "B"

Order Denying Petition for Rehearing

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 78-1289

UNITED STATES OF AMERICA,

vs.

PATTON, JOHN a/k/a Buncie
John Patton,

Appellant.

(D. C. Criminal No. 76-141-1)

Present: ALDISERT, VAN DUSEN and HUNTER,
Circuit Judges.

August 17, 1978

1. Appellant's Petition for Rehearing before original panel;

2. Copy of Judgment-Order entered August 7, 1978 in the above-entitled case. Judges Van Dusen and Hunter are requested to communicate with Judge Aldisert regarding this petition.

Respectfully,

M. ELIZABETH FERGUSEN,
Acting Clerk.

enc.
mef

The foregoing Motion is DENIED.

By the Court,

ALDISERT,
Judge.

Dated: September 5, 1978

APPENDIX "C"

18 U.S.C.A. §3500

18 U.S.C.A. §3500 provides:

. . .(b) After a witness called by the United States has testified on direct examination, the court shall, on motion of the defendant, order the United States to produce any statement (as hereinafter defined) of the witness in the possession of the United States which relates to the subject matter as to which the witness has testified. . .

(d) If the United States elects not to comply with an Order of Court under subsection (b) or (c) hereof to deliver to the defendant any such statement, or such portion thereof, as the court may direct, the court shall strike from the record the testimony of the witness, and the trial shall proceed unless the court in its discretion shall determine that the interests of justice require that a mistrial be declared.

(e) The term "statement", as used in subsections (b), (c), and (d) of this section in relation to any witness called by the United States, means -

(1) a written statement made by said witness and signed or otherwise adopted or approved by him;

(2) a stenographic, mechanical, electrical, or other recording, or transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness and recorded contemporaneously with the making of such oral statement; or

(3) a statement, however taken or recorded, or a transcription thereof, if any, made by said witness to a grand jury. . .

Nos. 78-569 and 78-5522

In the Supreme Court of the United States

OCTOBER TERM, 1978

JOHN PATTON, a/k/a BUNCIE, PETITIONER

v.

UNITED STATES OF AMERICA

FRANK DATTALO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General

PHILIP B. HEYMANN
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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The judgment orders of the court of appeals (Patton Pet. App. A; Dattalo Pet. App. A) are not reported.

JURISDICTION

The judgments of the court of appeals were entered on August 7, 1978 (Patton) and August 8, 1978 (Dattalo). Petitions for rehearing were denied on September 5, 1978 (Patton Pet. App. B; Dattalo Pet. App. B). The petition for a writ of certiorari in No. 78-5522 was filed on October 4, 1978, and the petition in No. 78-569 was filed on October 5, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the district court should have granted a mistrial or struck the testimony of two government witnesses because the witnesses' grand jury testimony was inadvertently withheld from the defense until after the completion of their testimony.

2. Whether the district court should have struck the testimony of a government witness because DEA agents, acting pursuant to routine DEA procedures, destroyed tape recordings of pretrial interviews with the witness.

3. Whether the district court should have declared a mistrial due to remarks in the prosecutor's closing argument.

STATEMENT

After a jury trial in the United States District Court for the Western District of Pennsylvania, petitioners were convicted of conspiracy to distribute heroin, in violation of 21 U.S.C. 846. In addition, each petitioner was convicted on two counts of distribution of heroin, in violation of 21 U.S.C. 841

(a)(1), and petitioner Dattalo was convicted on three counts of knowing use of a communication facility (a telephone) in facilitating the distribution of heroin, in violation of 21 U.S.C. 843(b).[1] Petitioner Patton was sentenced to concurrent terms of 15 years' imprisonment followed by three years' special parole. Petitioner Dattalo was sentenced to concurrent terms of 12 years' imprisonment on the conspiracy and distribution counts and four years' imprisonment on the telephone counts, followed by three years' special parole. The court of appeals affirmed by judgment orders (Patton Pet. App. A; Dattalo Pet. App. A).

The evidence adduced at trial showed that from about February 1975 to September 1976, petitioner Dattalo, co-defendant DeMarco, and co-conspirators Charles Kellington and Leonard Schumpert were partners in a heroin distribution ring in the Pittsburgh area (Tr. 232, 407). In the first week of September 1975, Hozie Wiggins, a long-time drug dealer who often assisted the group in putting together deals (Tr. 407), helped deliver two "balloons" (*i.e.*, prophylactics) of heroin from petitioner Dattalo and DeMarco to co-conspirator Martel Inmon (Tr. 413-414). Two weeks later Wiggins assisted DeMarco and petitioner Dattalo in delivery of two more ounces of heroin to Inmon (Tr. 417-418). The next week Wiggins personally delivered to co-defendant Sterling

[1] Co-defendant Frank Armocida was also convicted on two counts of distribution of heroin. He was sentenced to concurrent terms of five years' imprisonment, which was suspended, and placed on probation. Co-defendants Sterling Chapple and Joseph DeMarco were acquitted.

Chapple about $4,000 worth of heroin he had received from Kellington and Schumpert (Tr. 422-423). In early October Wiggins made another delivery through the same channels (Tr. 427-428).

In December 1975, Wiggins obtained one-half ounce of heroin from another distributor, petitioner Patton (Tr. 430-431). Before he could "cut" the heroin for street sale, however, Wiggins was arrested by Pittsburgh police (Tr. 432-433). In return for immunity from prosecution, he agreed to assist the government's investigation into the conspiracy (Tr. 434). Serving in an undercover capacity, Wiggins arranged a number of controlled buys from petitioner Patton. On January 20, 1976, he negotiated with Patton by telephone to purchase heroin and completed a purchase of $1,500 worth of the drug two days later (Tr. 529). On January 28, Wiggins again contacted petitioner Patton to buy two ounces of heroin, and the purchase was made three days later from Patton and Armocida (Tr. 531-533). Each telephone conversation was recorded, and the controlled purchases were made with government money and under DEA surveillance, with the drug eventually recovered for testing (Tr. 478-528, 535-538, 529, 531, 534). Wiggins testified that Schumpert had told him that the group's heroin supplier was petitioner Patton (Tr. 407-410). Petitioner Patton, in turn, told Wiggins that he had supplied petitioner Dattalo and Schumpert with 40 ounces of heroin for which he remained unpaid.[2]

[2] This connection between Patton and Dattalo was further confirmed by a conversation that DEA Agent Weatherbee overheard between the two men in a restaurant. After first discussing their various customers, including Wiggins, petitioner Dattalo arranged to receive another supply of drugs from petitioner Patton (Tr. 1280-1293).

Archie Patrick, another long-time drug dealer, was arrested by Pittsburgh police on February 20, 1974, on charges of attempted distribution of heroin. Like Wiggins, Patrick also agreed to cooperate with the authorities in their narcotics investigation (Tr. 1884). He then made a series of controlled buys of from one-half to two ounces of heroin from Inmon (Tr. 1893, 1910, 1935, 1973, 1989, 2003-2004, 2030-2032). Each purchase began with a recorded telephone conversation and was witnessed by DEA surveillance agents (Tr. 1897-1910, 1922-1956, 1960-2045, 2362-2571). Court-authorized wiretaps of petitioner Dattalo's and Inmon's telephones revealed that Inmon would contact Dattalo when he needed heroin, would receive his order, and would pass the drugs on to his customers, including Patrick (Tr. 2771, 2774, 2814, 2865-2867).

ARGUMENT

1. Petitioners contend (Patton Pet. 7; Dattalo Pet. 10-11) that the district court erred in failing to grant a mistrial or to strike the testimony of government agents whose grand jury testimony was not turned over to the defense until after completion of the government's case-in-chief.

Prior to trial the government agreed to provide petitioners with any Jencks Act materials 24 hours

in advance of a witness's testimony (Tr. 553). As the trial progressed petitioners claimed that they were entitled to the grand jury testimony of each witness the government called. Finally, the trial judge ordered the government to turn over all of the grand jury transcripts for the court's review (Tr. 575, 793). See *Palermo* v. *United States*, 360 U.S. 343, 354 (1959); 18 U.S.C. 3500(c). During presentation of the government's evidence, the judge released portions of the grand jury transcript of the government witness then testifying. Through an inadvertent error, however, the district court failed to turn over the testimony of DEA Agents Richard Weatherbee and Roy Upton, who had conducted parts of the narcotics surveillance and had dealt with and debriefed the informants, until after the government had rested its case.

When the error was discovered, petitioners moved for a mistrial, contending that their cross-examination of the agents had been impaired by the absence of their prior testimony (Tr. 3035, 3120-3125).[3] In response the district court offered, and the government agreed, to allow the government's case to be reopened so that the agents could be cross-examined further (Tr. 3079-3100). Petitioners declined this offer (Tr. 3128, 3132).

[3] There is some indication that defense counsel were not totally unaware that the agents had appeared before the grand jury. Petitioner Patton's attorney had been alerted by the government to the agents' appearance but apparently failed to request their testimony (Tr. 3039-3040).

The district court correctly refused to grant a mistrial or to strike the agents' testimony. In the first place, Agent Upton's testimony before the grand jury was not related to the subject matter of his direct testimony at petitioners' trial (Tr. 3126), and it therefore did not qualify as Jencks Act material. See 18 U.S.C. 3500(b). Moreover, the failure to provide the testimony was inadvertent—indeed, was as much the fault of the trial judge as the government—and could easily have been avoided if petitioners had put the court on notice that they had not received the agents' grand jury testimony. Finally, the violation could have been remedied by the reopening of the government's case, without any demonstrated adverse effect on petitioners, yet they chose not to avail themselves of that opportunity. See *United States* v. *D'Angiolillo*, 340 F.2d 453, 457 (2d Cir.), cert. denied, 380 U.S. 955 (1965).[4]

[4] The decision below does not conflict with the Third Circuit's prior decisions in *United States* v. *Prince*, 264 F.2d 850 (1959), and *United States* v. *Clark*, 346 F. Supp. 428 (E.D. Pa. 1972), aff'd, 475 F.2d 1396 (1973). In *Prince*, the government's failure to produce an agent's report was not discovered until a hearing on the defendant's motion to appeal *in forma pauperis*, rather than during the trial. In *Clark*, the government inadvertently failed to supply the defense with identification sheets prepared by government witnesses at a pretrial lineup. Two days into the trial the government noticed the error and the court, recognizing the need for additional cross-examination, offered to reopen the case so that the lineup witnesses could be recalled. Although the government agreed to this procedure, the defendant objected, and the court declared a mistrial. However, this ruling does not suggest that a mistrial is invariably required in such circum-

In addition, while petitioners may have lacked Agent Weatherbee's grand jury testimony during their cross-examination of the agent, they had other materials that covered in even greater detail what he had told the grand jury. These included the agent's reports (DEA-6 forms), the grand jury testimony of the informants he had debriefed, and other statements made to him by the informants (Tr. 3119). This information provided petitioners with an adequate basis upon which to cross-examine Agent Weatherbee. Indeed, petitioners do not suggest how they were prejudiced by the belated production of the agent's grand jury testimony. See *Killian* v. *United States*, 368 U.S. 231, 243-244 (1961); *United States* v. *Rivero*, 554 F.2d 213, 215 (5th Cir. 1977).

2. Petitioners contend (Patton Pet. 5-6, 7; Dattalo Pet. 6-7, 10-11) that the district court should have stricken the testimony of Archie Patrick because the tape recordings of his debriefings with DEA agents were destroyed in good faith prior to trial pursuant to routine DEA procedures. In *United States* v. *Vella*, 562 F.2d 275, 276 (3d Cir. 1977), cert. denied, 434 U.S. 1074 (1978), the Third Circuit held that rough interview notes of FBI agents, to which these tape recordings are equivalent (*United States* v. *Carrillo*, 561 F.2d 1125, 1129 (5th Cir.

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stances or that the judge would have abused his discretion in either recalling the witnesses over the defendant's objection or, as here, proceeding with the trial after the offer to reopen had been rejected.

1977)), should be preserved so that the district court can later determine whether the notes should be made available to a defendant. At the time of the destruction of the recordings here, however, and indeed even at the time of petitioners' trial, the law in the Third Circuit did not require the preservation and production of rough interview notes. See *United States* v. *Niederberger*, 580 F.2d 63, 71 n.12 (3d Cir. 1978), cert. denied, No. 78-234 (Nov. 27, 1978). The courts of appeals that now require the preservation of such notes uniformly agree that this rule should not be applied retroactively, especially where, as in this case, there is no suggestion that the destruction was in bad faith or that it prejudiced the defense.[6] See *United States* v. *Vella*, *supra*; *United States* v. *Robinson*, 546 F.2d 309, 312 (9th Cir. 1976), cert. denied, 430 U.S. 918 (1977); *United States* v. *Harrison*, 524 F.2d 421, 434-435 (D.C. Cir. 1975). See also *United States* v. *Augenblick*, 393 U.S. 348 (1969).[6]

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[5] The Drug Enforcement Administration has changed its procedures and now retains rough interview notes (Tr. 226). Accordingly, the issue presented here—which the Court has declined to review on several prior occasions (see, *e.g.*, *Mehta* v. *United States*, cert. denied, 434 U.S. 965 (1977); *Stebbins* v. *United States*, cert. denied, 434 U.S. 938 (1977))—is of little continuing importance.

[6] The statements prepared from the tapes were available to petitioners at trial. Furthermore, Patrick's trial testimony was almost totally corroborated by other evidence, including tape recorded telephone conversations and testimony by DEA agents who had witnessed the drug transactions. Indeed,

3. Petitioners' final contention (Patton Pet. 6-7; Dattalo Pet. 8, 11) is that the district court should have granted a mistrial based on the following comment of the prosecutor during the government's rebuttal argument to the jury:

> Ladies and gentlemen, let me suggest, that if justice isn't done in this case, if these people walk out without paying their due, there has been a swindle on this jury and on this system we all believe in.

We submit that petitioners were not prejudiced by this brief remark. The court gave the jury an appropriate cautionary instruction that the remarks of counsel are not evidence, and the proof of petitioners' guilt was overwhelming. Moreover, the statement, while perhaps not to be approved, was an isolated comment made at the end of an eight-week trial. The district court did not abuse its discretion in refusing to grant a mistrial. See *United States* v. *Lewis*, 547 F.2d 1030, 1037 (8th Cir. 1976), cert. denied, 429 U.S. 1111 (1977); *United States* v. *Shirley*, 435 F.2d 1076, 1079 (7th Cir. 1970); *United States* v. *Alloway*, 397 F.2d 105, 113 (6th Cir. 1968).

Patrick's testimony related primarily to his dealings with Inmon, rather than petitioners, and petitioners did not dispute Patrick's version of these events.

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

PHILIP B. HEYMANN
Assistant Attorney General

JOSEPH S. DAVIES, JR.
BARRY A. FRIEDMAN
Attorneys

DECEMBER 1978

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